

Draft Revisions

April 10, 2023

Chapter 322 Tobacco Regulations

[HISTORY: Adopted by the Board of Health of the Town of Groton 10-21-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Hours of retail sales — See Ch. 175.

Smoking — See Ch. 257.

§ 322-1 Findings; purpose.

- A. There exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases and precipitates allergic and hypersensitivity reactions in the lungs, eyes, nose and throat in nonsmokers exposed to secondhand smoke; and ample concern that minors have access to tobacco products, despite state laws that prohibit such access.
- B. The ~~Groton~~ Board of Health recognizes cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. Accordingly, the purpose of this regulation is to implement a strict and enforceable system to prevent the illegal sales of cigarettes and other tobacco products to minors and to protect nonsmokers from the adverse health effects of secondhand smoke.

§ 322-2 Statutory authority; position of Board.

- A. The Board of Health of the Town of Groton, pursuant to the authority granted under MGL C. 111, § 31, hereby adopts the following regulations as reasonable health regulations designed to protect and improve the health of children in the Town of Groton and also to protect the public health of the community.
- B. The Board of Health does not advocate smoking or the use of any tobacco product despite the permitting system created herein.

§ 322-3 Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them by this section:

BAR/LOUNGE

An establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

BOARD

The Board of Health of the Town of Groton.

CARTON

Any packaging that includes two or more packages of tobacco products or any single package of a tobacco product combined with another product.

DESIGNATED SMOKING AREA

An area, designated and posted by the proprietor, manager or other person(s) of authority, in which smoking is permitted. Said area shall not be an area where nonsmokers must have access and must be properly ventilated as defined herein.

EATING ESTABLISHMENT

A facility that holds a food service permit from Groton.

ENCLOSED

All space between the floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways).

EMPLOYEE

Any individual who performs services for an employer in return for wages or profit or on a voluntary basis.

EMPLOYER

Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of Groton or any agency thereof, which regularly uses the services of one or more employees.

GUARDIAN

Any individual who has legal responsibility for a minor under Massachusetts law.

HEALTH-CARE FACILITY

Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including, but not limited to, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

MINOR

Any person less than 18 years of age.

MUNICIPAL BUILDING

A building owned, leased or rented by the Town.

NONSMOKING AREA

Any area that is designated and posted by the proprietor or manager as a place where smoking by patrons, employees or others is prohibited.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to, an owner, operator, manager, proprietor or person in charge of any building, establishment, business or restaurant or retail store, or the agents or designees of any of the foregoing.

PROPER VENTILATION

A system, which is separately ventilated directly to the outside and which shall not allow any air to recirculate through the building ventilation system. The ventilated area shall be under negative pressure as to reduce air from escaping into other areas which may be accessed by nonsmokers.

PUBLIC BUILDING

An enclosed, indoor area when open to and used by the general public, including, but not limited to, the following facilities: auditoriums, licensed child-care location, schools, clinics, hospitals, nursing homes, long-term care facilities, public libraries, museums, theaters, retail stores, retail food establishments, indoor sports arenas, public transit facilities, enclosed shopping malls, hotel and motel lobbies, stairwells, hallways, entrances, public rest rooms, elevators accessible to the public, common areas in privately owned buildings and any clubs, rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

RESTAURANT

Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and other eating establishment which gives or offers food for sale to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

RESTAURANT WITH A BAR/LOUNGE AREA

An eating establishment that has a license to sell alcoholic beverages and contains a bar/lounge area devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

RETAIL FOOD ESTABLISHMENT

Any establishment commonly known as a "supermarket" or "grocery store" in which the activity is the sale of food items to the public for off-premise consumption.

RETAIL STORE

Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things, including supermarkets and grocery stores. "Retail store" shall not include restaurants as defined herein.

SEATING CAPACITY

The capacity designated on the occupancy permit of a restaurant.

SELF-SERVICE DISPLAY

Any device used to dispense any type of tobacco product from which the consumer may select the merchandise.

SMOKING

Inhaling, exhaling, burning or carrying any lighted tobacco product.

TAVERN-STYLE RESTAURANT

Any eating establishment that contains a bar and in which a minimum of 40% of the seating capacity (as defined on the occupancy permit) is located at the bar or within the bar area.

TOBACCO PRODUCT

Includes, but is not limited to, cigarettes, cigars, pipe tobacco, chewing tobacco, snuff or tobacco in any of its forms.

TOBACCO VENDING MACHINE

Any mechanical device designated for or used for the vending of cigarettes, cigars or other tobacco products upon the insertion of coins, trade checks, slugs or other form of payment.

TOWN

The Town of Groton.

WORKPLACE

Includes, but is not limited to, an enclosed area in which one or more employees perform services for their employer. It also includes private offices, individual work stations and all common areas, including rest rooms, conference rooms, hallways, stairways and entranceways.

§ 322-4 Prohibited or restriction of smoking; exceptions; violations and penalties.

- A. Smoking prohibited in municipal buildings. No person shall smoke or shall be permitted to smoke any tobacco product in a municipal building, as defined in § **322-3**.
- B. Smoking prohibited in public buildings. No person shall smoke or be permitted to smoke any tobacco product in a public building, as defined in § **322-3**. Restaurants, restaurants with bar/lounge areas, bars/lounges and tavern-style restaurants are separately addressed in Subsections **C**, **D**, **E** and **F** of this section.
- C. Smoking prohibited in restaurants. No person shall smoke or be permitted to smoke any tobacco product in a restaurant, as defined in § **322-3**.
- D. Smoking restricted in restaurants with bar/lounge areas.
 - (1) No person shall smoke or be permitted to smoke any tobacco product in a restaurant with a bar/lounge area, except that smoking is allowed in a bar/lounge area, which is enclosed and has proper ventilation, as defined in § **322-3**. In restaurants with bar/lounges where smoking is allowed, a minimum of 60% of the seating capacity, as defined in § **322-3**, must be designated as nonsmoking seats.
 - (2) Six months from the implementation date of these regulations, all designated smoking areas shall have proper ventilation, as defined in § **322-3**, and the establishment owner shall have on record a ventilation plan by a certified heating/ventilation/air-conditioning engineer or other professional that is approved by the ~~Groton~~ Board of Health.
- E. Smoking in bars/lounges. Unrestricted smoking is permitted in bars/lounges. Proprietors of bars/lounges are strongly encouraged to establish designated nonsmoking areas that take advantage of existing physical barriers and utilize available space in a manner that minimizes the presence of tobacco smoke in nonsmoking areas. (Designated smoking areas should be located near the exhaust vent of the establishment and nonsmoking areas should be located near the fresh air intake vent of the establishment.)
- F. Smoking restricted in tavern-style restaurants.
 - (1) Smoking is permitted in tavern-style restaurants, provided that a minimum of 33% of the seating capacity, as defined in § **322-3**, is designated nonsmoking. Only those eating establishments in operation on the effective date of this chapter are eligible to be classified as tavern-style restaurants.
 - (2) Seating in tavern-style restaurants will be arranged so that existing physical barriers and available space are utilized to minimize the presence of tobacco smoke in nonsmoking areas. Designated smoking areas shall be situated near the exhaust vent of the establishment. Nonsmoking areas shall be situated near the fresh air intake of the establishment.

- G. Election for coverage by private facilities. The owner, manager or other person in charge of a building or facility not covered by Subsections **A, B, C, D, E** and **F** of this chapter may elect to have the provisions of this § **322-4** apply by so notifying the Board in writing and by sending a copy of said notice to the Town Clerk and the Select Board and by posting signs prohibiting smoking as provided in Subsection **H** of this section of this chapter. [Amended 10-1-2018ATM by Art. 14]
- H. Posting notice of prohibition.
- (1) No person shall smoke in any place in which a nonsmoking sign is posted. Each person having control of premises upon which smoking is prohibited by and under the authority of this § **322-4** of this chapter shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).
 - (2) Bar/lounges, tavern-style restaurants and restaurants with bar/lounge areas that permit smoking must conspicuously post signs approved and supplied by the Board at all entrances advising patrons of the health hazards of environmental tobacco smoke.
 - (3) No person shall remove a sign posted under the authority of this chapter.
- I. Exceptions. Notwithstanding the provisions of Subsections **A, B, C, D, E, F** and **G** of this section, smoking may be permitted in the following places and/or circumstances:
- (1) Private residences, except when used as a licensed child-care facility or health-care facility.
 - (2) Hotel and motel rooms that are rented to guests that are designated as smoking rooms.
 - (3) Hotel and motel conference/meeting rooms and private and public assembly rooms while these places are being used for private functions.
 - (4) Private or semiprivate rooms of nursing homes and long-term care facilities, occupied by one or more patients, all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.
- J. Conflict with other laws or regulations. Notwithstanding the provisions of the foregoing Subsection **I** of this section, nothing in this chapter shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in other areas where it is prohibited by such fire, health or other regulations.
- K. Violations. Any person who violates any part of § **322-4** of this chapter shall be subject to a fine in an amount of \$100 for a first offense, \$200 for a second offense within a twelve-month period and \$300 for a third or subsequent offense within a twelve-month period.

§ 322-5 Smoking in workplaces.

- A. No person shall smoke or be permitted to smoke tobacco products in any workplace, except where smoking is permitted under § **322-4** or permitted in enclosed designated areas as defined in § **322-3**.
- B. Each employer operating a workplace in the Town of Groton shall establish and implement a written policy governing smoking in such workplace. Employees must be notified of the policy, and a copy of said policy must be posted in a location easily visible and accessible to all employees.

§ 322-6 Retail sale of tobacco products.

- A. Sales to minors. In conformance with MGL C. 270, § 6, the sale of cigarettes, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of 18 shall be prohibited in the Town of Groton. Similarly, it shall be prohibited in the Town of Groton that a person shall give a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of 18 unless he/she is the parent or guardian of the minor.
- B. Posting state law. In conformance with MGL C. 270, § 7, a copy of MGL C. 270, § 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than six feet from the floor. All cash registers that sell tobacco products shall post a notice no smaller than nine square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that a person standing at or approaching the cash register may readily see it. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or more than six feet from the floor. No person shall remove a copy so posted while said premises are used for the sale of tobacco products.
- C. Sales permit required.
- (1) No person or entity shall sell tobacco products at retail within the Town of Groton without a tobacco sales permit issued by the Board of Health.
 - (2) The fee for this permit is \$20, renewable annually on or before October 31.
 - (3) The tobacco sales permit shall not be issued until the applicant reads the Board of Health regulations and MGL C. 270, §§ 6 and 7, regarding the sale of tobacco. The applicant shall then sign a statement on the application stating that s/he understands the regulations. It shall be the responsibility of the permittee to instruct all employees on the sale of tobacco products to minors.
 - (4) The tobacco sales permit must be displayed no higher than six feet and no lower than four feet, in clear and unobstructed view, behind the cash register receiving the highest volume of tobacco product sales.
- D. Penalties and suspension of permit for sales to minors only.
- (1) Penalties and suspension of permit for violations of Subsection A of this section shall be as follows:
 - (a) In the case of the first violation, the permittee shall receive a fine in an amount of ~~\$100~~ \$1000 and the permit shall be suspended for one business day.
 - (b) In the case of the second violation within a twelve-month period, the permittee shall be subject to a fine in an amount of ~~\$200~~ \$2000 and the permit shall be suspended for three consecutive business days.
 - (c) In the case of three violations within a twelve-month period, the permittee shall be subject to a fine in the amount of ~~\$300~~ \$3000 and the permit shall be suspended for 30 consecutive business days.
 - (2) A permit shall be suspended after notice and opportunity to be heard as follows: The Board of Health shall provide written notice to the permittee of the intent to suspend a tobacco sales permit. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven days after the date of said notice. The permittee shall have an

opportunity to be heard at such a hearing and shall be notified of the Board of Health's decision and reasons in writing.

- E. Identification required. No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age. No such verification is required for any person over the age of 26.
- F. Self-service displays. Self-service displays of tobacco products from which the customer may select individual packages or cartons are to be prohibited. All tobacco products are to be kept behind the counter and accessible only to store personnel.
- G. Sale of loose cigarettes. No manufacturer, distributor or retailer may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than 20 cigarettes.
- H. Vending machines. Effective 60 days after the effective date of this regulation, cigarette vending machines or any other device for the sale or distribution of tobacco products are prohibited in the Town of Groton.
- I. Inspection/enforcement. The Board of Health shall enforce this regulation through periodic inspections conducted by the Board of Health or its enforcement officer(s) or designee(s). Inspections may be conducted each quarter or more frequently at the discretion of the Board of Health and may be conducted in cooperation with the Groton Police Department.
- J. Penalties.

(1) Penalties for violations of Subsections **B, C, E, F, G** and **H** of this section shall be as follows:

- (a) In the case of the first violation, the permittee shall receive a fine in an amount of ~~\$100~~ \$1000.
 - (b) In the case of the second violation within a twelve-month period, the permittee shall receive a fine in the amount of ~~\$200~~ \$2000.
 - (c) In the case of three or more violations within a twelve-month period, the permittee shall be subject to a fine in the amount of ~~\$300~~ \$3000 and shall be punished by a suspension of a permit for 30 business days for each violation.
- (2) A permit shall be suspended after notice and opportunity to be heard as follows: The Board of Health shall provide written notice to the permittee of the intent to suspend a tobacco sales permit. The notice shall contain the reasons for the suspension and establish date and time for a hearing. The date of the hearing shall be no earlier than seven days after the date of said notice. The permittee shall have an opportunity to be heard at such a hearing by filing a written petition to the board within seven days of the receipt of the order.
- (3) After the third violation, all tobacco products shall be removed from the premises upon suspension of the tobacco sales permit. Failure to remove shall constitute a separate violation of this section.

§ 322-7 **Noncriminal disposition of violations.**

As an alternative to initiating criminal proceedings, violations of §§ **322-4, 322-5** and **322-6**, of this chapter may be enforced in the manner provided in MGL C. 40, § 21D, pursuant to § **1-4B** of the Groton Code.

§ 322-8 **Severability.**

If any provision of this chapter is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 322-9 **When effective.**

This regulation shall take effect 60 days after publication of a summary of this chapter in a newspaper in the Town of Groton. A public ~~meeting~~hearing regarding this chapter was conducted on ~~July 22, 1997~~ May 1, 2023. This chapter was voted by a majority of this Board on ~~October 21, 1997~~ May X, 2023

Attachments:

322a Tobacco Regulations